IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8077 of 2007
WITH
SPECIAL CIVIL APPLICATION No.8087 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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Dr. NIKUNJ SURESHBHAI KOTECHA & 4 - Petitioner(s)
Versus
SAURASHTRA UNIVERSITY
THRO. VICE CHANCELLOR & 1 - Respondent(s)

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Appearance :

Special Civil Application No.8077 of 2007

MR NAVIN K PAHWA for M/S THAKKAR ASSOC. for the Petitioners
MR JR NANAVATY for MR AR THACKER for Respondent(s):1-2

Special Civil Application No.8087 of 2007

MR AD OZA for Petitioner(s) : 1 - 3.
MR JR NANAVATY for MR AR THACKER for Respondent(s): 1

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 29/03/2007
COMMON ORAL JUDGMENT

(1) Considering the importance and the urgency of the controversy brought before the Court, the matter has

been heard finally with the consent of the learned advocates appearing for the respective parties. RULE. Learned advocate appearing for the respondent-University, in both the petitions, is directed to waive service.

(2) The learned advocates for both the sides have referred to and relied upon the facts and documents in Special Civil Application No.8087 of 2007 and hence, the facts are taken from the said petition and Special Civil Application No.8087 of 2007 is treated as the principal petition.

(3) The petitioners appeared at the post graduation entrance examination held for Md./M.S. faculties on 25.02.2007. The result of the examination came to be declared on 14.03.2007. The respondent-University published an advertisement in Gujarati daily '*Gujarat Samachar*', Rajkot Edition on 20.03.2007 to the effect that the result of the examination held on 25.02.2007 is cancelled by the P.G. Medical Admission Committee and re-examination will be held on 27.03.2007. The petitioner approached this Court on 22.03.2007.

(4) On 23.03.2007, the following order came to be made by the Court in presence of the learned advocate appearing for the respondent-University on advance copy:

> "1. Both these petitions involve common issue and hence, were taken up for hearing simultaneously. The principal grievance of the petitioners, who are students, aspiring admission in Post Graduate Course of Medicine and other allied branches, is that the decision by the respondent-University to cancel the result of the admission test announced on 14th March, 2007 and the decision to re-conduct the test on 27th March, 2007 is prejudicial to the interest of the petitioners for various reasons, which need not be set out for the present.
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> 2. During course of hearing a suggestion was made on behalf of the petitioners to the effect that the decision taken by P.G.Medical Admission Committee on 19th March, 2007 to re-conduct the admission test does not consider: the fact that on the basis of Common Admission Test held by Gujarat University and the respondent-University, a student is entitled to get preference for seeking admission in three colleges of the respondent-University, and two colleges of Gujarat University on the basis of option exercised, and on holding of a fresh admission test only by the respondent-University, the student is deprived-of of the said

option; hence, the respondent-University can adopt the same modality which has been adopted by Gujarat University, namely, reassess the same answer papers which are available with the respondent-University in relation to the admission test held on 25.02.2007 at which the petitioner students had appeared. That this would be in interest of the entire student community who have appeared at the test held on 25.02.2007.

3. Mr.J.R.Nanavati, learned senior advocate appearing for respondent-University states that the respondent-University, more particularly the P.G.Medical Admission Committee shall consider the aforesaid suggestions in the event the Court so desires.

4. Accordingly, the respondent-University is directed to convene a meeting of the P.G.Medical Admission Committee at the earliest and consider the aforesaid suggestion treating the same as a suggestion made by the Court. The matter to be listed on 26th March, 2007.

5. The learned advocate for respondent-University is directed to convey this order orally even before a simple copy of the order is available so as to enable the Vice Chancellor of the respondent-University to make appropriate arrangement to convene the meeting."

(5) In compliance with the order the committee convened a meeting on 24.03.2007 and passed a resolution which has been annexed with the affidavit-in-reply dated 26.03.2007.

(6) On the same day, namely, 26.03.2007 after hearing the parties, it transpired that there were certain averments made in the affidavit-in-reply and the accompanying note, which was different from the resolution dated 24.03.2007. Therefore, the Court directed the Vice Chancellor of the respondent-University to place on record by way of an affidavit, the facts which were within personal knowledge of only the Vice Chancellor of the respondent-University and by way of interim arrangement certain directions were made in the following terms:

> "1. As directed by this Court on 23rd March, 2007, the respondent-University convened a meeting of the Post Graduate Admission Committee on 24th March, 2007. This fact appears from the affidavit dated 26th March, 2007 made by the Chairman of the Post Graduate Admission Committee.

2. However, along with the affidavit at pages 46 to 50 certain notes appear in English language, while the actual resolution stated to have been made by the PG Medical Admission Committee at the meeting held on 24th March, 2007, appears in Gujarati. In light of the fact that there appears variation in the resolution appearing at page 51 and the note preceding the resolution at pages 46 to 50 the learned Sr. Advocate appearing for the respondent-University was asked by the Court to obtain instructions. He has made a statement, under instructions of the Chairman of the PG Medical Admissions Committee, who is present in the Court that what appears at pages 46 to 50 are the minutes of the deliberations which the Committee undertook before resolving which is recorded at page 51 in Gujarati.

3. The following extract which appears at pages 46 and 47 is in relation to the personal knowledge that only the Vice Chancellor of the respondent-University Dr.Shri Kamlesh Joshipura can have and hence the learned advocate for the respondent-University is directed to place on record an affidavit by the Vice Chancellor himself.

“But at the same time we have to point out the following problems, which may arise to the notice of the Hon'ble High Court. As it was

observed by the Lordship it created impression amongst the members that the students may have apprehension that the Gujarat University may not consider the students for admission in category which has been described. It is respectfully submitted that the Hon'ble Vice-Chancellor of Saurashtra University Dr.Kamlesh Joshipura and Hon'ble Vice-Chancellor of Gujarat University Shri Primal Trivedi had telephonic talk and there was conformation amongst these students that the understanding of both the University will remain the same even if the reexamination is conducted and so called such apprehension has no foundation at all and students should not keep in apprehension in their minds".

4. In the mean time considering the fact that the retest is to be held on 27th March,2007 by way of interim relief, it is directed that the respondent-University may proceed with the test but shall not declare the result without prior permission of the Court, and such retest shall be subject to the final outcome of the petition.

5. It is further directed that respondent-University shall also undertake reassessment of the answer-sheets of all the students who had appeared at the original test held on 25.2.2007 and shall keep the result in a sealed cover

which shall not be declared without prior permission of this court.

6. Matters to come up on 28th March, 2007."

(7) When the matters came up again on 28.03.2007 the Court took note of the fact that the Vice Chancellor of the respondent-University was not in a position to state on oath the various averments made by the Chairman of the committee in the affidavit-in-reply dated 26.03.2007 because of, according to the learned advocate for the respondent-University, change in circumstances as reflected by two facsimile messages dated 27.03.2007 and 28.03.2007. The Court, therefore, recorded in its order dated 28.03.2007 as under:

"1 In compliance with order dated 26.3.2007 Vice Chancellor of respondent University was to place on record an affidavit recording gist of understanding about the telephonic talk the Vice Chancellor of respondent University had with Vice Chancellor of Gujarat University.

2 Today the learned Advocate for the respondent University has placed on record a copy of facsimile message dated 27.3.2007 from the Vice Chancellor of respondent University to

Vice Chancellor or Gujarat University which reads as under :

"Dear Trivedisaheb,

As per our telephonic talk I reconfirm that inspite of P.G.Medical entrance re-examination conducted by the Saurashtra University.

The Gujarat University will consider the candidates of Saurashtra University who have applied for admission in The Gujarat University and appeared in entrance test will be entitled as our understanding in category II of The Gujarat University as per merit of The Gujarat University.

With best regards,

Yours

Sd/-

(Dr. Kamlesh Joshipura)
Vice Chancellor".

3 The learned Advocate for the respondent University has also placed on record another facsimile message bearing No. R/3597/07 dated 28.3.2007 from the Registrar of the Gujarat University to the Vice Chancellor of the respondent University which reads as under :

"No. R/3597/07 Date : 28.3.2007.

To,
The Vice Chancellor,
Saurashtra University,
University Road,
Rajkot – 360 005.

Subject : Pre P.G. Medical Entrance.

Resp. Sir,

In connection with the Pre P.G. Medical Entrance Test held on 25th February, 2007, while considering all the aspects, it is not possible for the Gujarat University to consider the merit list of the re-examination conducted by The Saurashtra University, since the Gujarat University has accommodated students of all other University's of Gujarat.

Thanking you,

Yours sincerely,

Sd/-
(Dr.A.V.Bhandari)
Registrar. ''

4. Therefore, it appears that the averments made in the affidavit dated 26.3.2007 by the Chairman of Post Graduate Medical Admission Committee (at page Nos. 32 to 43) remain unsupported in this regard.

5. Hence, the learned Advocate for the respondent University prays for time to obtain instructions and address the Court as to the stand the respondent University would like to take in the circumstances.

To be listed on **29.03.2007**.

Registry to place copy of this order in connected matter."

(8) The controversy lies in a very narrow compass. By virtue of a Memorandum of Understanding (MoU) entered into by the respondent-University with Gujarat University on 04.01.2007 it was decided that both the universities would hold the entrance examination on a common day, at common time, and by a common question paper. One of the terms of understanding was, by way of Clause No.9, that the respondent-University shall hand over printing of question papers to the same agency, to whom the work of printing is assigned by Gujarat University on the same terms and at the same rate. Though from the MoU between the two universities it does not become clear, but it is an accepted position between the parties, that the assessment of the answer books was handed over by both the universities to an independent agency, who was entrusted the work of assessment by Gujarat University.

(9) According to the petitioners:

> "3.8 The petitioners most humbly and respectfully submit that the result of the examination of Gujarat University was declared

on 13.3.2007 and the result of the respondent-University though was to be declared on 13.3.2007, it was declared on 14.3.2007 in the evening hours on the Notice Board of the University under the signature of Shri D.K. Shah, Chairman, P.G. Medical Admission Committee, Saurashtra University, Rajkot. I crave leave to this Hon'ble Court to refer to and rely upon the result declared by the respondent-University on 14.3.2007 at the time of hearing of this petition. It is further submitted that the result which was declared by the Gujarat University on 13.3.2007 was 11% result and there was hue and cry amongst the students; and hence, the Gujarat University again got the answer sheets rechecked and reexamined and subsequently the result was declared 17.3.2007 which was about 35%. It is pertinent to note that the question paper of the examination was the same for both the Universities and the Gujarat University had declared result as stated hereinabove. ....."

"3.9 The petitioners most humbly and respectfully submit that results were declared by both the universities and even there were wide publications through electronic media. It is further submitted that the Vice Chancellor of the respondent-University had given one interview on E-T.V. (Gujarati) with regard to the result and had shown his satisfaction with regard to the same. Even it was declared that the said result is

absolutely just and proper and in accordance with law. At no point of time there was any complaint from either of the sections with regard to the result. ....."

(10) The correct sequence of results has been stated as under in the affidavit-in-reply:

"..... I say that sequence of result is as follows:

1. *First result received on 13.3.2007 and opened by Saurashtra University in which 11.5% students found eligible but on the grounds of certain ambiguity verification report was asked for by the University and the same was not notified by the University.*

2. *In response of above, agency forwarded revised result on 14.3.2007 declaring 45% students eligible for merit list; the University notified the same.*

3. *Without any communication from University, the agency forwarded another result mentioning final result on 17.3.2007 in which marks of 106 candidates were altered out of which 14 students became eligible for merit list and marks of 43 students were improved who were otherwise eligible as per result of 14th March; this one also not notified by the University and matter was placed before the*

Admission Committee on 19.03.2007 and accordingly decision to hold re-entrance test on 27.3.2007 was taken by the Committee."

(11) It is at this stage, according to the respondent-University, that the committee assembled on 19.03.2007 and passed a resolution for holding re-examination. The reasons which weighed with the committee for coming to such a conclusion have been stated in the preamble as under:

Free English Translation

"Today at the meeting of P.G. Medical Admission Committee, P.G. Entrance Test held on 25.2.2007. Agency in connection has (given) result on 14.03.2007 which is published, therefore, again after three days Vice Chancellor has received improved Result of 56 students from agency. This was informed by mail and has expressed sorrow by the agency but in connection with entrance test of Saurashtra University, Gujarat University doubt has arisen in students and in general public under the circumstances improved result sent by agency create several questions. That want Committee feels and credibility and trust in the agency is doubtful. In this circumstances, taking into account entire

> students community and the interest, having kept in view and taking into account prestige of P.G. Admission Committee & Saurashtra University following resolution is passed."

(12) It is this resolution which has given rise to the litigation. According to the petitioners, the candidates who appeared in the examination have not been charged with any malpractice at the examination and in the circumstances, the respondent-University cannot cancel the result unilaterally without hearing the students who are directly going to be affected by such cancellation of the result, nor can the respondent-University take a decision to hold a re-examination as the same is likely to result in prejudice to the students considering the fact that by virtue of the MoU between the universities and the option exercised by the students the successful candidates who have cleared the entrance examination are entitled to opt for colleges affiliated with Gujarat University by way of second choice.

(13) On behalf the respondent-University the facts were not disputed. It was submitted that the first set of

result was received on 13.03.2007 by the respondent-University through Gujarat University. However, as the university was not satisfied, the university called upon the agency to recheck and inform the correct result. Upon being asked as aforesaid, the agency furnished a revised result on 14.03.2007. This result was declared by the respondent-University. Thereafter, on 17.03.2007, it is the say of the respondent-University, that another set of revised result was forwarded by the agency on its own without the university having called for such a revision. That it was at this stage that the respondent-University, and more particularly the committee, felt that the credibility and reliability of the agency was doubtful. That as recorded by resolution dated 19.03.2007 the respondent-University did not say anything beyond that but considering the circumstances in which the results were revised the respondent-University felt that to uphold the reputation of the respondent-University, the respondent-University is entitled to adopt a different course of action from the course of action adopted by the Gujarat University.

(14) Mr. J.R. Nanavati, learned advocate on behalf of the respondent-University, submitted that it was not open to the Court to interfere unless and until the petitioners were able to establish that the decision of the committee was neither rational nor correct, or that the decision was arbitrary, or that the decision was not supported by any material on record. That in the facts and circumstances of the case none of the factors could be applied and the Court should not entertain the petitions in this situation. In support of the submissions, reliance was placed on Paragraph No.7 of the affidavit-in-reply as well as Paragraph No.14 of the affidavit-in-reply from which the learned counsel read extensively to emphasise the submissions made. The learned counsel invited attention to the decision of the Apex Court in the case of Chairman, *J&K State Board of Education Vs. Feyaz Ahmed Malik & Ors.*, (2000) 3 SCC 59, with special reference to Paragraph Nos.16, 18, 19 and 20 of the judgment.

(15) In rejoinder the learned advocates appearing for the petitioners have placed reliance on the following four decisions:

(i) *Manish Ujwal & Ors. Vs. Maharishi Dayanand Saraswati University & Ors.*, 2005 (13) SCC 744;

(ii) *Dr. Rakesh Kumar Singh & Ors. Vs Banaras Hindu University*, AIR 1996 Allahabad 281;

(iii) *Rajesh Kumar & Ors. Vs. Dy. CIT & Ors.*, (2007) 2 SCC 181; AND

(iv) *Kanpur University & Ors. Vs. Samir Gupta & Ors.*, AIR 1983 SC 1230.

(16) There cannot be dispute with the broad propositions relied upon by the learned advocate for the respondent-University. But the question is whether the decision of the respondent-University to hold re-examination can be termed to be a decision which is based on any material available with the respondent-University, namely, material of the nature so as to warrant re-examination. In absence of any direct, cogent, relevant material the decision making process would be directly affected.

(17) The learned advocate appearing for the respondent-University very candidly and fairly accepted that the respondent-University does not even state, nor is there any evidence to allege any malpractice, mass-copying, or irregularity in conduct of examination. In

the circumstances, can it be stated that merely because the results were declared and revised subsequently by the independent agency, per se such an act on the part of the agency would call for conducting re-examination of all the students. This has to be appreciated in light of the fact that in all about 1400 students appeared at the examination under the aegis of both the universities on 25.02.2007. Out of which about 438 student were students of the respondent-University. During the course of hearing it was submitted on behalf of the respondent-University that only a few students have approached the Court out of 438 candidates who took the examination and in the circumstances, the decision of the respondent-University was required to be upheld as, according to the respondent-University, majority of the candidates were satisfied with the decision of the respondent-University. The Court is not required to decide a matter on the basis of numbers. Whether decision making process is correct and justified or not is to be examined. There is no question of majority or minority as one would associate in relation to a decision

making process of a body. Therefore, this contention is besides the point.

(18) In relation to the submission on behalf of the petitioners that in absence of any allegation of malpractice, etc. the decision of the respondent-University to hold re-examination after cancelling the result en masse is not warranted, the respondent-University has stated as under in the affidavit-in-reply:

> "14. Referring to ground (e) of the petition, I say that the Vice Chancellor made a statement on 13.3.2007 and thereafter the agency communicated further corrections on 14.3.2007. I say that the agency has corrected the results twice, one on 14.3.2007 and another on 17.3.2007. I say that having regard to the nature of mistake and corrections and gravity of the matter, the Admission Committee had no other alternative but to pass the impugned resolutions. I say that the first result was received by respondent University through Gujarat University. I say that, on 14.3.2007, the agency communicated revised results and stated that: "*Due technical snag in software, the result was wrong, sorry for inconvenience*". *Again on 17.3.2007, the agency informed the Vice Chancellor with profound regret and stated that: "We wish to sincerely place on*

record our sincere apology and profound regret for declaration of wrong result (Code: AP-MD) which was caused due to some snag in the software used for accessing to the correct set of answer keys to evaluate the answers marked by the candidates. The OMG system had captured the response data correctly from the Answer Sheets but the Key for each set was not accessed separately instead the set 'A' only was applied to all. This caused wrong scores." I say that the Admission Committee found that the mistake committed by the agency would create doubtful questions and felt that credibility of the agency was doubtful, as stated in the resolution dated 19.3.2007. I say that in the resolution of 24.3.2007, the Admission Committee has considered the results received on 13.3.2007, 14.3.2007 and 17.3.2007 and I crave leave to refer to and rely on the same. I say that the Admission Committee has, on proper consideration, passed both the resolutions which are legal and proper and the petitioners have no right to question the same. I *say that sequence of result is as follows:*

1. *First result received on 13.3.2007 and opened by Saurashtra University in which 11.5% students found eligible but on the grounds of certain ambiguity verification report was asked for by the University and the same was not notified by the University.*

2. In response of above, agency forwarded revised result on 14.3.2007 declaring 45% students eligible for merit list; the University notified the same.

3. Without any communication from University, the agency forwarded another result mentioning final result on 17.3.2007 in which marks of 106 candidates were altered out of which 14 students became eligible for merit list and marks of 43 students were improved who were otherwise eligible as per result of 14th March; this one also not notified by the University and matter was placed before the Admission Committee on 19.03.2007 and accordingly decision to hold re-entrance test on 27.3.2007 was taken by the Committee."

(19) Therefore, it is apparent from the averments made by the respondent-University that the error is at a stage which is post examination, namely, after the examination was conducted and concluded peacefully without any act of malpractice on the part of the candidates who took the examination. Merely because the agency who was entrusted the assessment of the answer sheets committed an error in feeding the proper data in the computer resulting in revision of

the results that by itself cannot constitute relevant material so as to arrive at a decision to cancel the entire result and hold a re-examination. Even the resolution dated 19.03.2007 merely records that a doubt has arisen in the minds of the students and the public at large, that the university finds the credibility of the agency doubtful and doubts as to whether any trust can be placed in the functioning of the agency. Thereafter, the resolution records that taking into consideration the interest of the entire student community, the entrance test conducted on 25.02.2007 should be cancelled, the agency be black listed and after obtaining legal advice initiate legal proceedings against the agency. Lastly, it has been resolved that the university and the committee accept the moral responsibility for this situation and express regret for this. Thereafter, it is decided that a re-examination should be held in the same manner by holding the examination in a free and fair atmosphere as was done earlier.

(20) Thus, the respondent-University accepts in its resolution that the examination was conducted in a

free and fair manner when there was no instance of any malpractice or irregularity in conduct of the examination. The respondent-University has in its over anxiety as to its own prestige lost the focus qua the students who are directly affected by the decision. The respondent-University cannot successfully answer as to why should the students be put to rack when there is not even a whisper as regards the conduct of the students. An examination by itself is for assessing the merits of the students inter se; an examination is for the students, taken by an examining body, written by the students. In an examination the students are the core, the examining body is merely the peripheral ring. Respondent-University has failed to grasp that reputation of an examining body is made or marred by the candidates who appear at the examination – by the conduct of such candidates. Then, in the circumstances, the decision to hold a re-examination merely because the committee and the respondent-University doubt the credibility and are not in a position to repose trust in the agency cannot be a ground for cancelling the entire result and holding a

re-examination. Therefore, this part of the resolution dated 19.03.2007 cannot be upheld and is hereby quashed and set aside.

(21) A question yet survives as to what happens to the result declared. The respondent-University had declared the result on 14.03.2007 and it is an accepted position that the Vice Chancellor of the respondent-University had gone on air in electronic media to state that the university had no doubt as to the results declared. In the circumstances, the said result declared on 14.03.2007 cannot be cancelled.

(22) Vide order dated 26.03.2007 this Court had permitted the respondent-University to proceed with the retest scheduled on 27.03.2007 so as not to upset the schedule but at the same time categorically recorded that the retest shall be subject to the final outcome of the petition. In the circumstances, the retest held on 27.03.2007 shall be treated as cancelled and the earlier test held on 25.02.2007 would be the only valid examination conducted by the respondent-University.

(23) There is one more additional, but important, reason. As noted by this Court in its order dated 23.03.2007 on the basis of common admission test held by both the Gujarat University and Saurashtra University a student is entitled to get preference for seeking admission in the colleges of the respondent-University and the Gujarat University on the basis of option exercised. Therefore, once the decision of the respondent-University to hold the re-examination is struck down the option exercised by the student will come into effect and shall operate as per the MoU between the two universities. In these circumstances, it is necessary to take note of the fact that as per terms of MoU both the universities are to exchange the lists of students who had remained absent at the examination held on 25.02.2007 as well as the students who had been declared to be not entitled to appear at the examination. Therefore, considering the arrangement between the two universities it is in the larger interest of the students of both the universities that the action of the respondent-University to hold a re-test should be struck down.

(24) In the aforesaid fact situation, the decision of the respondent-University to hold the re-test is quashed and set aside. The re-examination dated 27.03.2007 by way of interim arrangement is declared to be null and void and shall have no effect and the result thereof shall not be declared by the respondent-University. The result already declared by the respondent-University on 14.03.2007 shall remain in force for all intents and purposes and shall be the only result taken into consideration both by the respondent-University and Gujarat University for determining the merit of the successful candidates for admission to post graduate course.

(25) The petitions are allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

(26) At this stage the learned advocate for the respondent-University states that the operation of the judgment and order be stayed upto 05.04.2007. The request is rejected taking into consideration that as per the schedule fixed by the Medical Council of India

10.04.2007 is the final date for completing the process of admission.

(27) Registry to place a copy of this order in connected matter.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*